

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

CONOCO PHILLIPS LOS ANGELES REFINERY,

Employer

and

Case No. 31-RC-8468

PAPER, ALLIED-INDUSTRIAL, CHEMICAL
AND ENERGY WORKERS INTERNATIONAL
UNION, AFL-CIO, CLC, AND ITS LOCAL 8-675

Petitioner

DECISION AND DIRECTION OF ELECTION

Paper, Allied-Industrial, Chemical and Energy Workers International Union, and its Local 8-675 (herein the Petitioner), filed a petition under Section 9(c) of the National Labor Relations Act, as amended (herein the Act), seeking to represent the seven Health and Safety Specialists (“HSS”) and the Health and Safety Trainer (“HST”) of Conoco Phillips Los Angeles Refinery (herein the Employer).¹ The Petitioner is the Section 9(a) representative of the Employer’s employees at several of the Employer’s California facilities. Currently, the Petitioner represents all operations, maintenance, and laboratory employees at the Los Angeles, California refinery (the “Unit”).

¹ No collective bargaining agreement covers the petitioned-for HSS employees and the HST.

The Petitioner claims to represent the HSS employees and the HST as a part of this Unit. Accordingly, the Petitioner seeks a self-determination election to allow the HSS employees and the HST to vote on whether they desire to be represented by the Union as a part of the existing Unit.²

The Employer argues that a self-determination election is inappropriate for several reasons:

- (1) The current collective bargaining agreement for the Unit is a contract bar to this proceeding.
- (2) The petitioned-for employees are managerial employees under the Act, and should be excluded.
- (3) The petitioned-for employees are supervisors under the Act, and should be excluded.
- (4) The petitioned-for employees do not share a community of interest with the Unit.
- (5) The Senior Health and Safety Specialists (“Senior HSS”)³ and the Industrial Hygienist (“IH”) are only appropriately included in a newly formed, stand-alone Health and Safety Unit.⁴

² The Petitioner declines to seek to represent the HSS employees and the HST as a separate unit. There is no history of collective bargaining among the HSS employees and the HST, and no other labor organization seeks to represent them.

³ The Senior HSS employees are a different classification from the HSS employees petitioned for by the Petitioner.

⁴ The Employer’s and the Petitioner’s post-hearing briefs are consistent with their positions during the hearing.

For the reasons set forth below, I conclude that there is no contract bar to this proceeding, that the HSS employees and the HST are not supervisory or managerial employees, and that they share a community of interest with the existing Unit. Further, I find that the Senior HSS employees and the IH should not be included with the HSS employees and the HST in the Voting Group, as no party contends that they share a community of interest with the existing Unit.

I. FINDINGS

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Upon the entire record in this proceeding, I find:

A. Hearing Officer Rulings: The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

B. Jurisdiction: The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.⁵

⁵ The Employer, Conoco Phillips, a Delaware corporation, is engaged in the business of refining oil at its facility in Los Angeles, California. Within the past 12 months, the Employer has purchased and received materials and supplies at its California facilities valued in excess of \$50,000 directly from sources located outside the State of California. The Employer, thus, satisfies the statutory jurisdictional direct inflow standards, as well as the Board's discretionary standard for asserting jurisdiction.

C. Labor Organization: Petitioner⁶ is a labor organization within the meaning of Section 2(5) of the Act, as amended, and claims to represent certain employees of the Employer.

D. Question Concerning Representation: A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.

E. Appropriate Voting Group: The following employees of the Employer constitute a voting group who may vote whether they wish to be represented by the Petitioner in the existing Unit:

All Health and Safety Specialists and Senior Health and Safety Specialists, the Health and Safety Trainer, and the Industrial Hygienist employed by the Employer at its Los Angeles, California refinery; excluding all other employees, contract employees, guards and supervisors as defined in the Act.

II. PROCEDURAL HISTORY AND OVERVIEW

The Employer operates a refinery in Los Angeles, California, which is comprised of facilities in Wilmington and Carson, and a harbor port at Marine Terminal (collectively, the “Los Angeles Refinery”). The bargaining Unit includes employees at all the facilities of the Los Angeles Refinery. At the Los Angeles Refinery the Employer is engaged in the business of refining crude oil into products such as gasoline, jet fuel, and diesel fuel. The Unit employees are Operating, Maintenance, and

⁶ Petitioner is an organization in which employees participate, and which deals with the Employer concerning grievances, labor disputes, wages, rates of pay, hours of employment, and working conditions.

Laboratory employees in the Los Angeles Refinery.⁷ Of the approximately 600 individuals employed at the Los Angeles Refinery, there are approximately 390 employees in the Unit, which is comprised of 285 Operations employees, 90 Maintenance employees, six Business Analysis employees, six Warehouse employees, two Health and Safety Representatives, and one Accounting Clerk.⁸

The Petitioner has been the certified exclusive collective-bargaining representative of the Unit employees since the 1940s. The Petitioner filed the Representation Petition in this matter on January 14, 2005; the hearing was held on January 31, February 1, and February 2, 2005.

The Los Angeles Refinery includes three facilities and numerous buildings. At the Wilmington facility there is a Health and Safety building, a Warehouse building, and an Operations building. The entire Wilmington facility is approximately 1½ square miles. The Carson facility is approximately 1½ miles by ¾ mile.⁹ The Health and Safety employees assigned to the Wilmington facility have offices in the Health and Safety building, or the “Firehouse.” The Health and Safety employees with offices in the Firehouse include the HSS and Senior HSS employees, the IH, the HST, the Health and Safety Manager, and the Health and Safety Supervisor. In addition, the Health and Safety Representatives (“HSR”) and the Operator Trainers, both of which are bargaining unit positions, have offices in the Firehouse. All of the HSS employees share one common office.

⁷ According to the collective bargaining agreement, the parties acknowledge that the agreement reflects a multi-bargaining unit agreement that includes Los Angeles, Rodeo, and Santa Maria.

⁸ The record does not reflect how many Laboratory employees work at the Los Angeles Refinery.

⁹ The record makes no further description of the Carson facility or the Marine Terminal.

The HSS employees, the HST, and the bargaining unit employees have the following benefits in common: (1) the pension plan; (2) vacation leave; (3) holiday pay; (4) bereavement leave; (5) jury duty leave; and, (6) life insurance. However, while bargaining unit employees receive overtime pay and shift differential pay, the HSS employees and the HST are salaried, and eligible for high intensity work period bonuses. Salaried employees receive performance evaluations in January or February of each year, and are eligible for merit increases in March of each year. The bargaining unit has a severance package plan that is different from the salaried employees' plan. Further, non-bargaining unit employees are not eligible to participate in the medical and dental plans administered by the Union. All employees park in the same parking lot, and no spaces are reserved for management. All employees, including the unit Operators, the Health and Safety employees, and any individual entering the Operations area, must wear the same flame-retardant safety coveralls called "Nomex." Health and Safety employees traditionally wear red Nomex coveralls, while other employees have no particular color to which they are assigned. There are also different break areas for the various departments.

The HSS employees and the HST are expected to work in various locations in the event of a strike. The HSS employees spend approximately 85-90% of their time auditing workstations, or inputting the audits into computers, and 5-10% of their time determining the safety of a confined space. A permit must issue before a confined space can function as a workspace. Overall, HSS employees and the HST spend about 75% of their time in the Operations units. In 2004, the HST filled in as an HSS employee between 20 and 25 times.

Auditing involves monitoring and evaluating the safety of a workspace, and consulting and advising the Operator. If an HSS employee sees an unsafe condition in an operating unit, the Health and Safety worker will correct the

condition, and, if necessary, go to the Operator's supervisor. All employees, including Operators, are required to conduct an audit at least twice a month. The Operators, like the HSS employees, can audit any work area in any Operations unit. Further, all employees have the power to shut down a job they deem to be unsafe.

One aspect of the permitting process is verifying the Operator's safety check of a confined space. For a high-energy permit, both the Operator and the HSS employee will sign the permit. In permitting, the HSS employee does the exact same thing as the Operator, but insures the safety of the space by providing a second set of eyes on the issue.

While Operators and Maintenance employees may be the first to respond to an emergency, the HSS employees act as Incident Commanders ("IC") during an emergency. Incidents vary greatly. Among other things, an incident can be a fire, an oil spill, a gas release, a leak, an odor, or a medical emergency. When there is a Level I incident at the Refinery, an HSS employee will act as the IC. All incidents begin as Level I, and more serious incidents are elevated to Level II. As IC, the HSS employee will set up a joint command post with the Operations Chief. Incidents may last anywhere between 10 minutes and 10 hours. The IC will oversee the incident and direct the Employer's response, issuing joint orders with the Operations Chief and Staging Officer. One witness describes the IC as having an overall leadership role during an incident. The IC can call upon any needed resource. One HSS employee testified that when he is IC, the Operations supervisor gives work directions to the Unit employees who are first responders. Another HSS employee testified that he gives direction to supervisors as IC. Further, the Response Plan may dictate the

response to a particular incident. For example, during a recent sulfur trioxide release, the Response Plan dictated the use of soda ash to neutralize the acid.¹⁰

If an incident is serious enough to be elevated to Level II, the Health and Safety supervisor will relieve the HSS employee from the IC duties. There has not been a Level II incident at the refinery since before September 2004, more than five months before the hearing. This particular HST testified that the last time he remembers serving as IC was in 1999, when he was an HSS employee. Another HSS employee estimates that he has served as IC about 50 times in 3½ years, usually for about 20 to 30 minutes each time. The IC is also responsible for declaring “all clear” at the conclusion of an incident. Some IC’s receive formal training, while others are trained on-the-job.

The HSS employees and the HST attend fire training in Nevada and Texas. Operators and Maintenance employees also attend this training. The HSS employees and the HST, however, may be involved in training or in assisting the instructors. The bargaining unit position of Health and Safety Representative (“HSR”) may also provide or assist with fire training in Nevada or Texas.

While an Operator needs permission from the supervisor to leave the Unit, the HSS employees and the HST are not required to tell their supervisor if they leave the plant. The HSS employees and the HST freely move about the plant premises, and are not required to tell their supervisor where they are. Like Health and Safety employees, Maintenance employees work all over the plant. Maintenance employees, however, do not roam around the plant, they go where they are needed. Bulk Operators work in the Tank Farm, which surrounds the plant. The Bulk

¹⁰ No further discussion or description of the Response Plan was made during the hearing.

Operators may also go into the Operations units. Very few Operators need to leave the plant during the working day. On occasion, a few Operators will drive down to the dock to tie up a ship. While the HST may go off premises to meet with an outside training contractor, he always tells his supervisor before he leaves the premises.

The HSS employees and the HST have credit cards from the Employer, and have a spending limit of \$25,000. One HSS testified that he cannot use the credit card without supervisor approval, another HSS testified that he has used the credit card without approval to buy t-shirts and dinners at out-of-state training, but admits that he had not used the credit card to purchase equipment without supervisor approval. The HSS employees and the HST may also serve as liaisons with outside vendors, such as the fire department.

The HST serves as the emergency response training coordinator. Before becoming the HST, he was an HSS employee. The HST also serves as an instructor in safety classes. He selects outside instructors for safety classes with the help of his supervisor. The HST serves as an instructor at fire training at the University of Nevada, Reno, and Texas A&M University. The HST testified that he teaches fire suppression about as much as the HSS employees. The HST also coordinates spill response drills, and reviews, and may give recommendations regarding the training material used by the HSS employees. The HST, however, has not overridden any of the training material prepared by the HSS employees.

The HST facilitates the training of outside contractors before they are allowed to do work at the plant. The training consists of watching a videotape, and taking a test, which the HST monitors and checks. If a contractor does not pass the test, the HST will turn him away. Also, while the contractors are working, the HST will audit their work area. If the contractors do not comply with the Employer's standards, the HST will refer them to his supervisor.

An Operator I's base pay is \$66,725, and an Operator II's base pay is \$65,610. Bargaining unit Health and Safety Representatives get 14%, plus \$0.50, over base pay. These numbers do not include overtime or the shift differential pay. The HSS employees and the HST are Grade 13. The pay range of a Grade 13 is \$56,000 to \$84,000.

Operators and HSS employees interact with each other daily. Operators, however, do not consult with the HST. During "turnarounds," which occur every other year, Operators serve as temporary HSS employees. Temporary HSS employees do permitting, auditing, and gas testing. The two HSR employees, which are bargaining unit positions, perform many of the same duties as the HSS employees, including auditing, permitting, training, and preparing training materials, and acting as IC. HSR employees are Operators who serve as HSR for two years before returning to their position as Operator.

Recently, the Employer has required that newly hired HSS employees have a 4-year degree. Because this is a new requirement, most HSS employees do not have a 4-year degree.

Although a newly hired Operator is trained and working as an Operator within two weeks to two months, it can take 30 months to become an Operator II, and 10 years to become a Head Operator. Like Operator II, it can take Laboratory and Warehouse employees 30 months to reach a level two position.

The parties stipulated that, other than when serving as an Incident Commander, an HSS employee has no supervisory indicia as set forth in Section 2(11) of the Act. The Employer asserts that the only supervisory indicia of the HST, other than when serving as an Incident Commander, is when he recommends discipline and directs employees while at fire training in Nevada or Texas.

The HST testified that he is not in charge of employees while at out-of-state training. He states that he has never told employees they were misbehaving, he never sent an employee home, and he never reported an employee to a supervisor for conduct at out-of-state training. The Employer presented no evidence otherwise.

III. ANALYSIS AND CONCLUSIONS

A. Self-Determination Election Appropriate

The Board has found self-determination elections appropriate in several situations, including where an incumbent union seeks to add a previously unrepresented group of employees to its existing unit and where no other labor organization seeks to represent the unrepresented employees. In this situation, if a majority of petitioned-for employees votes for representation, this result is taken to indicate their desire to be made part of the existing unit. *Warner-Lambert Co.*, 298 NLRB 993, 996 (1990).

A self-determination election in which the voting group is asked to choose only between representation in the current unit or for no representation is appropriate. *Carr-Gottstein Food Co.*, 307 NLRB 1318, 1319 (1992). Here, the employees in the voting group will not be asked whether they prefer representation in a separate Health and Safety unit inasmuch as the Petitioner has declined to participate in such an election and the Board will not force a labor organization to assume the representation of employees in a unit when the labor organization has declined to do so. *Carr-Gottstein*, 307 NLRB at 1319.

If a majority of employees in the voting group casts ballots in favor of the Petitioner, the employees will be taken to have indicated their desire to be included in the Unit currently represented by the Petitioner, and the Petitioner may bargain for such employees as part of that Unit. If a majority of valid votes is not cast

for representation, the votes will be taken to have indicated the employees' desire to remain unrepresented. Accordingly, I find that a self-determination election is appropriate.

B. Current Collective Bargaining Agreement Not a Contract Bar

In Board Exhibit 2, the Employer asserts that the current collective bargaining agreement covering the represented employees is a bar to this proceeding. The Employer, however, admits that the Petitioner never agreed not to represent the HSS employees.

A contract bar issue may arise when employees are found to be an accretion to an existing unit. *Firestone Synthetic Fibers Co.*, 171 NLRB 1121, 1123 (1968). Here, it cannot be said that the HSS employees and the HST constitute an accretion to the existing unit, and no party urges that an accretion be found. At the hearing, the Employer argued that the HSS employees and the HST, along with the Industrial Hygienist and the Senior HSS employees, should be in a separate and distinct unit.¹¹ Because the petitioned-for HSS employees and the HST could be an appropriate separate unit, accretion is inapplicable. *Passavant Health Center*, 313 NLRB 1216, 1218 (1994). Accordingly, I find that no contract bar precludes a self-determination election for the unrepresented HSS employees and the HST.

¹¹ The Petitioner does not dispute that the HSS employees and the HST could constitute an appropriate stand-alone unit. As set forth above, however, it declines to represent these employees as a separate unit. Moreover, the evidence supports a finding that these employees could appropriately be considered a separate unit.

C. The HSS Employees and the HST Are Not Managerial Employees

Although the Act contains no explicit reference to managerial employees, the Supreme Court excluded them from coverage in *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974). In that decision, the Court defined managerial employees as those with discretion to “formulate and effectuate employer policies by expressing and making operative the decisions of their employer.” The Court noted that such employees are “much higher in the managerial structure” than the supervisors explicitly excluded by Congress, which “regarded [managerial employees] as so clearly outside the Act that no specific exclusionary provision was thought necessary.”

Thus, an individual can be excluded from the bargaining unit as a managerial employee only if they “exercise discretion within, or even independently of, established employer policy and are aligned with management.” *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). It must be shown that they “represent management interests by taking or recommending discretionary actions that effectively control or implement employer policy.” Managerial status is thus “reserved for those in executive-type positions, those who are closely aligned with management as true representatives of management.” *General Dynamics Corp.*, 213 NLRB 851 (1974).

The *Bell Aerospace* definition of managerial status “has been construed narrowly, as indeed it should be, because those people who fall within it are to be denied substantial statutory rights.” *Curtis Industries, Division of Curtis Noll Corporation*, 218 NLRB 1447 (1975). As the Board noted in *Curtis*, “many employees whose job titles indicate on the surface managerial status and whose job descriptions call for a high degree of responsibility . . . have been found to be employees rather than managerial personnel since they do not exercise sufficient independent discretion or otherwise effectuate management policies.”

As with supervisors, the party seeking to exclude an individual from participating in a representation election as a manager has the burden of establishing that the individual is ineligible. As with supervisors, where the evidence on the issue of managerial status is in conflict or otherwise inconclusive, the Board will find that the party seeking exclusion has failed to meet its burden. *International Center for Integrative Studies/The Door*, 297 NLRB 601 (1990).

Based on the above, I conclude that there is little support for the Employer's contention that the HSS employees and the HST have significant discretion in formulating or effectuating its policies. Accordingly, I conclude these employees are not managers and shall be eligible to vote in the self-determination election.

D. The HSS Employees and the HST Are Not Supervisory Employees

The Employer contends that the HSS employees and the HST are supervisors under Section 2(11) of the Act. The party asserting supervisory status carries the burden of proving supervisory status. *Kentucky River Community Care, Inc.*, 121 S. Ct. 1861, 1866-1867 (2001). At the hearing, the parties stipulated that when the HSS employees are not serving as IC, the only possible primary indicia of supervisory status is their ability to recommend discipline. The parties further agreed that when the HST is not serving as IC, the only possible primary indicia of supervisory status is his ability to recommend discipline and direct employees while at out-of-state training. As the Employer presented no evidence that the HSS employees or the HST can recommend discipline, and no evidence of the HST's supervisory authority at out-of-state training, I will only address whether these employees exercise supervisory authority while serving as IC.

With regard to performing the tasks of an IC, the evidence establishes that although the HST has served as IC about 40-50 times, he has not served as IC since 1999, before he became the HST. One HSS employee testified that he has served as IC less than 100 times since 1997, another HSS employee testified that he has served as IC about 50 times since becoming an HSS in 2001. According to the evidence, another HSS employee has never served as IC.

Assuming *arguendo* that when acting as IC the employees are exercising some supervisory authority, a question discussed *infra*, the threshold question is whether serving as IC is “regular and substantial,” such that the HSS employees and the HST should be excluded from the Unit. An employee acting as a supervisor is considered to be a supervisor within the meaning of the Act “only if the individual’s exercise of supervisory authority is both regular and substantial.” *Hexacomb Corporation*, 313 NLRB 983, 984 (1994). Where an employee spent between 15 and 20% of his time in a supervisory capacity, the employee may be not excluded from a bargaining unit on the presumption that he is a supervisor. *Gaines Electric Co.*, 309 NLRB 1077 (1992). Further, because there was no pattern to his supervisory assignments, his duties did not cause him to be excluded from the unit. *Id.*

Clearly, since the HST has not performed the duties of an IC since becoming the HST, he is not a supervisor and should not be excluded from the Unit on this basis. Similarly, the HSS employees who have not served as an IC are not supervisors and should not be excluded from the Unit.

The record regarding the remaining HSS employees showed that one HSS employee served 100 times since 1997, and another HSS employee served 50 times since 2001, which roughly averages to once or twice a month. As stated above an HSS employee can serve as IC for only a few minutes to a few hours per incident. Since incidents are by definition emergencies, serving as IC is not regular or

scheduled. Therefore, these employees should not be prevented from voting in a self-determination election based on their service as IC given that the nature of IC is sporadic, intermittent, and minor compared to their other duties. *Gaines Electric Co.*, 309 NLRB 1077 (1992).

The remaining question is whether an IC exercises supervisory authority. Certainly, the IC makes decisions and acts with some authority during an incident. However, the IC sets up a joint command with an Operations supervisor, or the Operations Chief. And, while one witness testified that he directs the work of the rank and file employees during an incident, another testified that the Operations supervisor directs the work of the rank and file employees during an incident. Because the evidence is insufficient to clearly indicate that the IC directs the work of the rank and file employees with independent judgment, I find that the duties of an IC are not supervisory in nature.

In sum, I find that even if the HSS employees exercise supervisory authority while sporadically serving as an IC, the times that they serve as IC is a significantly smaller percentage of their time performing other duties; therefore, they are not supervisors under the Act, and should not be excluded from the Unit. *Gaines Electric Co.*, 309 NLRB 1077 (1992).

E. The HSS employees and the HST Share a Community of Interest with the Unit

In determining whether to group various employees in a bargaining unit, the Board looks to see if there is a community of interest among the categories of employees. *Global Marine, Inc.*, 214 NLRB 192, 198 (1974).

The factors considered by the Board when determining whether there is a community of interest are: (1) desires of the parties; (2) history of bargaining;

(3) similarity of skills and job functions; (4) common supervision; (5) contact or interchange with other employees; (6) similarity of working conditions; (7) type of industry; (8) organization of plant; (9) whether the employees work in separate areas; and (10) whether any union seeks to represent the employees separately. *Id.* at 198-99, citing *Sheffield Corp.*, 134 NLRB 1101, 1103-04 (1961).

As noted previously, the Employer has refused to recognize the HSS employees and the HST as a part of the Unit, and the Petitioner has declined to represent the HSS employees and the HST separately. Further, no other union seeks to represent the HSS employees and the HST. Thus, if the HSS employees and the HST desire representation by Petitioner, they must be included in the existing Unit.

Although the HSS employees and the HST do not share immediate or first-level supervision with any of the employees in the existing Unit, this factor is not dispositive because the employees in Operations do not share supervision with the employees in Maintenance, the Warehouse, or the Laboratory. While HSS employees are currently required to possess a 4-year degree, most HSS employees do not possess a degree. The base wages of the employees in the Unit are slightly lower than the wages of the HSS employees and the HST. However, employees in the Unit are paid overtime and paid a shift differential. Employees in the Unit also share many of the same benefits, including the pension plan, vacation leave, holiday pay, bereavement leave, jury duty leave, and life insurance with the HSS employees and the HST. Also, their working conditions are similar in that they park in the same lot, and they eat lunch in the same, or similar, areas.

Further, the HSS employees and the HST have overlap with the Operators in skills and duties, and they have significant interchange with the Operators on a daily basis. Most of the HSS employees came from bargaining-unit positions. Operators rotate into HSR positions for two-year assignments, and they

serve as temporary HSS employees during “turnaround,” occurring every other year. Operators, the HSS employees, and the HST have daily contact. In fact, the HSS employees spend 75% of their time in Operations. Also, the HST was previously an HSS employee, and he filled in for HSS employees between 20 and 25 times in 2004.

The HSS employees spend 85% to 90% of their time auditing workstations. This requires them to interact with Operators, answering their questions and providing guidance as to safety issues. All employees, Operators included, must perform at least two audits a month. These audits can occur anywhere in the plant. Also, all employees also have the authority to shut down any job based on safety. Overall, the HSS employees spend about 75% of their time in the Operations units.

Operators and HSS employees also work together on the permitting process, which involves writing permits for confined spaces. The Operator first reads meters and makes an assessment of a confined space, then, an HSS employee, or the HST, provides a “second set of eyes” as to the safety issues of the space. The Operators and the HSS employees or the HST perform the exact same tasks when issuing a permit for a confined workspace.

Accordingly, I find that the HSS employees and the HST share a sufficient community of interest with the employees in the existing Unit.

V. CONCLUSION

In light of the foregoing, I conclude that the current collective bargaining agreement is not a bar to this proceeding. Accordingly, I shall order a self-determination election among the HSS employees and the HST. Those in the voting group include:

All Health and Safety Specialists and the Health and Safety Trainer employed by the Employer at its Los Angeles, California refinery; excluding all other employees, contract employees, guards and supervisors as defined in the Act.

The question on the ballot will be whether they desire representation by the Petitioner as part of the operations and maintenance unit or whether they desire no representation. Should a majority vote in favor of representation, I find the following to constitute an appropriate unit¹² for purposes of collective bargaining:

Included: All operating, maintenance and laboratory employees, health and safety specialists, senior health and safety specialists, a health and safety trainer, and a industrial hygienist at the Employer's Los Angeles refinery.

Excluded: Executive, administrative and professional employees, guards, technical employees, janitors, metallurgical and reliability inspectors, supervisors, as defined in the National Labor Relations Act, mail room and copy room employees, and telephone operator.

There are approximately eleven employees in the voting group and approximately 400 employees in the above-described appropriate unit.

¹² In a post-hearing stipulation, the parties agreed to this unit description.

DIRECTION OF ELECTION¹³

I shall conduct an election by secret ballot among the employees in the voting group found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations.

ELIGIBLE TO VOTE: Those in the voting group who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off, are eligible to vote. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States Government may vote if they appear in person at the polls.

INELIGIBLE TO VOTE: Employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that commenced more than 12 months before the election date and who have been permanently replaced are ineligible to vote.

¹³ In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that I will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Those eligible shall vote whether they desire to be represented for collective bargaining purposes by PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND ENERGY WORKERS INTERNATIONAL UNION, AND ITS LOCAL 8-675, as part of the existing Unit or whether they desire no representation.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that the Employer must file an election eligibility list, containing the FULL names and addresses of all the eligible voters, with me within 7 days of the date of the Decision and Direction of Election. The list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election only after I have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

In order to be timely filed, such list must be received in the Regional Office, 11150 West Olympic Blvd., Suite 700, Los Angeles, California 90064-1824, on or before, February 28, 2005. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 2 copies, unless the list is submitted by

facsimile, in which case no copies need be submitted. To speed the preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

RIGHT TO REQUEST REVIEW

A request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, under the provision of Section 102.67 of the Board's Rules and Regulations. The Board in Washington must receive this request by March 4, 2005.¹⁴

DATED at Los Angeles, California this 18th day of February, 2005.

/s/ James J. McDermott
James J. McDermott, Regional Director
National Labor Relations Board
Region 31

¹⁴/ See <http://gpea.NLRB.gov> for e-filing requirements.